



PECFA POST



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WELCOME TO THE NEW PECFA POST!

The PECFA Post has been reorganized in an effort to provide a more diversified publication. PECFA Site Review and Claim Review Sections are working together to produce a single publication that will contain topics covering claim as well as site review issues. As always, we hope you enjoy the publication and maybe even learn something new. Should you have any comments or suggestions, please refer to the contact and [submittal information procedure](#) on the bottom of Page 2.

PECFA Owner Reporting

PECFA site owners who have not submitted incurred costs and who plan to submit claims for reimbursement under the fund will be asked to report the outstanding balances for their site(s).

The Wisconsin Department of Commerce (Commerce) has an [established web-based system in place for Lender Reporting](#). Currently lenders report unreimbursed balances on PECFA sites for which they have cleanup loans. Commerce expects that the owner reporting system will work in the same way. The burden of responsibility will be on the owners to report the total of the non-submitted PECFA costs incurred to Commerce when there is no loan or when the lender is not reporting for the owners.

The information collected will be used to estimate future program obligations, identify high cost sites requiring Commerce review and provide a means of determining if individual sites are moving towards closure.

Commerce anticipates that the web-based owner reporting system will be available early next year.

Reporting will be required quarterly or biannually; the frequency has yet to be determined. At the start of each reporting period, Commerce will notify owners with a letter identifying system availability for owner input. The letter will include a unique ID # and a PIN #, both of which must be used to gain access into the system. The reporting period will typically be open for one month and reporting must be completed within this time. Commerce is not making reporting mandatory at this time. However, the process should be relatively uncomplicated and only take a few minutes to complete for each reporting period. Therefore, we hope to have a high rate of voluntary compliance.



FAREWELL TO A PECFA SITE REVIEWER

We'd like to bid a fond farewell to Nancy Kochis, of the Milwaukee Site Review office. As many of you may remember, Nancy was one of the founding Commerce Site Reviewers. She transferred to DILHR then the newly formed Department of Commerce from the DNR (four years) in 1996. Nancy has decided to devote more time to her family. We wish her well and thank her for her years of dedication to the PECFA Program and State of Wisconsin.

REMINDER

Please remember to include both the established **Commerce and DNR BRRTS numbers** that identify your project(s), on ALL your correspondence. By not including these numbers, the response time may be significantly increased.

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ALL CAP EXCEEDENCE REQUESTS

Site Reviewers are receiving too many cap exceedence requests, which contain insufficient information to make a determination. Lack of adequate information results in lost time and money when site review staff have to request additional information. To ensure that request(s) are considered in a timely manner, please submit the request in accordance with the directions as presented in [Update 11](http://www.commerce.state.wi.us/ERER-PECFA-Update11.pdf) (<http://www.commerce.state.wi.us/ERER-PECFA-Update11.pdf>).

FILE REVIEW PROCEDURES

All reviews of **PECFA claim files** are scheduled through *Kristi Hammes at 608-267-3753*. Please call and plan ahead, as retrieval time from the record center varies. Once you request a file(s), you will be notified when the records have been received in the PECFA Madison office and are available for review.

Site review files are maintained by the office(s) responsible for oversight of the specific project. Please call the appropriate office (Madison, Milwaukee, Oshkosh or Stevens Point) to schedule file review. Call *Kristi Hammes at 608-267-3753* to schedule a file review for case files that are located in the Madison office and closed cases that are in storage. See attached [PECFA Site Review Zone Contact Information](#) or on our [WEB site](#).

Direct-Push and Temporary Monitoring Well Groundwater Sampling

Groundwater samples collected using direct-push methods and one-time-use (i.e., "temporary") monitoring wells are referred to as "grab" samples. These samples are obtained using a wide assortment of sampling

devices and techniques, instead of through established methods from standard monitoring wells constructed to [Wis. Adm. Code NR 141](#) specifications. Because of the variability in these sampling methods, grab groundwater samples may or may not accurately represent groundwater quality at the sampling location. Therefore, in order for grab groundwater results to be seriously considered for regulatory decision making, site owners and environmental consultants must provide adequate details regarding the sampling equipment and the sample collection methods used.

Any time a grab groundwater sample is collected and the site is under regulatory jurisdiction of the Department of Commerce or could be transferred to Commerce in the future, the following information (at a minimum) should be submitted:

- A discussion of or a copy of the standard operating procedure (SOP) document that describes how the sample was collected. The discussion or SOP should identify the type of sampling device (e.g., HydroPunch™, GeoProbe™, temporary slotted PVC well, screened/open hollow-stem auger) and purging/sampling equipment (e.g., submersible pump, peristaltic pump, tubing with foot-valve, bailer) utilized and the water volume purged to remove drilling effects that might influence sample quality. If the grab sample was not collected in accordance with a generic SOP, then explain the difference(s) in the actual sampling techniques used.
- A boring log showing the open borehole or temporary screen interval from which the grab groundwater sample was collected.
- For borings intersecting the water table or greater than 10 feet deep, a boring abandonment form completed in accordance with [NR 141](#).

Failure to provide the information listed above may delay the regulatory review process.

PECFA Post circulation and a request for Topics of Concern

We are continuing to move toward total electronic distribution of the *PECFA Post*. We need your e-mail address if you are not already receiving the Post electronically. Forward your e-mail address to khammes@commerce.state.wi.us. If you do not have e-mail, you may write Kristi Hammes at ERS Division, Bureau of PECFA, PO Box 7838, Madison WI 53707-7838 and request to be placed on a mailing list.

We are always happy to receive suggestions for future *Post* topics or comments on current articles. Please use the e-mail or mailing addresses listed above to submit your suggestion(s) and / or comments to Kristi Hammes.

PUBLIC BID PROCESS REMINDER

In recent bid rounds, Commerce has received increasing numbers of bid responses from consultants. In order to expedite the bid opening process, please note the following: responses are to be submitted in triplicate and are to include the license number of the person (Professional Engineer, Professional Geologist, Hydrologist or Soil Scientist licensed by the State of Wisconsin Department of Regulation and Licensing) who signed the Bid Response (1st Page). In addition, all copies should be stapled at the upper left corner (no spiral binding, report covers, etc.) and Commerce does adhere to the bid end date and time. To ensure that your bid response is received by the deadline, you may wish to explore alternatives to the U. S. mail.

MORE SOIL GIS INFORMATION

With the inception of the Soil GIS Registry on August 1, 2002, the Wisconsin Department of Natural Resources has created a single checklist of items needed for both the Soil and Groundwater GIS package. Fee checks must be submitted to the WDNR with the GIS packet submitted to the agency with regulatory jurisdiction. The new combined checklist can be found at <http://www.dnr.state.wi.us/org/aw/rr/archives/pubs/RR688.pdf>.

COMMENTS FROM COMMERCE LEGAL STAFF

Costs denied because of missing documentation in the claim still remain the single largest contributor to appeals. Usually what's missing is a written work product, an invoice, an insurance certificate, or a bid. Even though the 30-day appeal period is short, it is often possible to submit missing documentation with the appeal. When this happens, the Department can immediately review the appeal for settlement. Even if you cannot get the missing documentation within 30 days, the documentation should be submitted as soon after the appeal as it's available. The sooner the documentation is submitted, the sooner the Department can offer a settlement and pay the money your client is asking for.

In the reason for ineligibles column on the PECFA decision spreadsheet missing documentation will either be described specifically (such as "missing bid," "only 2 bids," "no bids," "charged for RAP, but none submitted"), or it will be described generically (such as "missing documentation" or "not substantiated."). Even if you

believe all necessary documentation for a particular cost item was submitted in the claim, the fastest way to get a settlement for your client is to submit the documents that establish the eligibility of the cost item along with a brief explanation of why the cost item is now eligible. If you don't know which bid or document is missing, submit all of the documents you believe are necessary to establish the eligibility of the cost item.

If you wait to be contacted by an attorney or if you call the reviewer to ask him or her to tell you exactly which document is needed, it causes substantial delay because the claim file is stored off-site. Unless it is completely impossible for you to figure out any documentation that would demonstrate the eligibility of a cost, just submit what you have available, even if you think it was submitted already. If the documents you submit are still insufficient, your submittal of the available documentation will trigger a letter from the department's attorney asking for a particular document that is still needed. If you submit nothing with the appeal (or as soon as possible after the appeal is filed,) it may be months before the appeal is resolved after several rounds of AI requests and responses.

Some consultants submit appeals by fax and do not include the attachments with the faxed appeal. This is OK. We actually encourage this approach if the attachments are lengthy or if it is likely they would be illegible if faxed. Try to get the appeal attachments mailed out immediately, however. Don't wait for the attorney to call because attachments mentioned in the appeal have not been sent to us. When documents are obviously missing, we frequently just set the file aside to wait for them to be submitted. If both sides are waiting for the other to do something, the appeal obviously doesn't move towards settlement.

ISSUES OF CONCERN BY CLAIM REVIEWERS

- Cost Separation/Methodology

Claim reviewers are consistently seeing submitted claims with multiple occurrences that do not have proper cost separation as well as claims that include costs for non-eligible tanks and/or products on site. These problems are compounded when they are not addressed in the submitted reports.

Examples are:

- Waste oil contamination located away from the primary occurrence with clean separation of soil and/or groundwater.

See "Cost Separation" next page

“Cost Separation”**- from previous page -**

- Fuel oil contamination from tanks not used for resale purposes or tanks used only for heat and located within an otherwise eligible occurrence.
- Other non-eligible tanks/products or contaminants (chlorinates, foundry waste, etc.) within the boundaries of an otherwise eligible occurrence.

When there are clearly separate occurrences of eligible contamination and there are costs incurred to investigate, remediate, and/or monitor these areas, costs must be separated by occurrence. The costs specific to each occurrence must have a separate claim submittal for reimbursement. See [Comm 47.30\(4\)](#). An occurrence is defined [per Wisconsin State Stats 101.143\(1\)\(d\)](#) as a contiguous contaminated area resulting from one or more petroleum product discharges.

Claim reviewers frequently determine the existence of multiple occurrences based on site maps and data provided in reports but the reports may not clearly indicate if occurrences have been addressed as a single or multiple occurrences. **If the consultant has not complied with Comm 47 by not submitting an approved methodology prior to claim submission, reviewers are obligated to separate costs in a decidedly conservative manner.** Separation may be based on the comparative volumes of soil removed, the number of borings or monitoring wells related to each occurrence, by comparing tank volume(s) to total storage volume, comparison of contaminant volumes, etc.

If a reviewer decision regarding cost separation is appealed, it will entail consultant time to establish an approvable methodology and to explain to Commerce's satisfaction their non-compliance with the requirements of Comm 47 when the situation was first recognized. It will also involve reviewer time to re-visit the claim file and make their recommendations regarding settlement or hearing. Should an appeal be successful, the PECFA fund pays increased costs due to the accrual of interest on the successfully appealed amount.

Consultant compliance with [Comm 47.30\(4\)](#) will avoid time delays while reviewers examine the available information to apply a methodology. It will also reduce the time, efforts and costs involved in unnecessary appeals.

- Other problems seen during claim review

Claim reviewers have identified a few of the problems they see during claim review. Here is a brief list of some of the more common items:

- Withholding of pertinent information; methodology i.e., commingled or multiple plumes/ineligible product (refer back to the Cost Separation/Methodology article);
- Claims submitted in a disorganized manner;
- Missing reports or incomplete reports which do not support the claimed costs;
- Costs claimed through a specific date without reports documenting the work done to support the costs claimed for that period;
- Absence of documentation in the submitted reports of commingled plumes, multiple plumes, and / or discussion of obviously ineligible products and a related methodology for cost separation;
- Lack of documentation to support a cost cap exceedence;
- Lack of information showing the commodity bids / bid comparisons obtained; For example, the preparer may indicate the chosen bidder on the 2B, but does not indicate what criteria were used to select the low bidder. The reviewer is left to make the decision of what criteria should be compared to find the low cost;
- Failure to bid commodity services by common unit cost;
- Lack of documentation of eligibility for unidentifiable claimed costs.

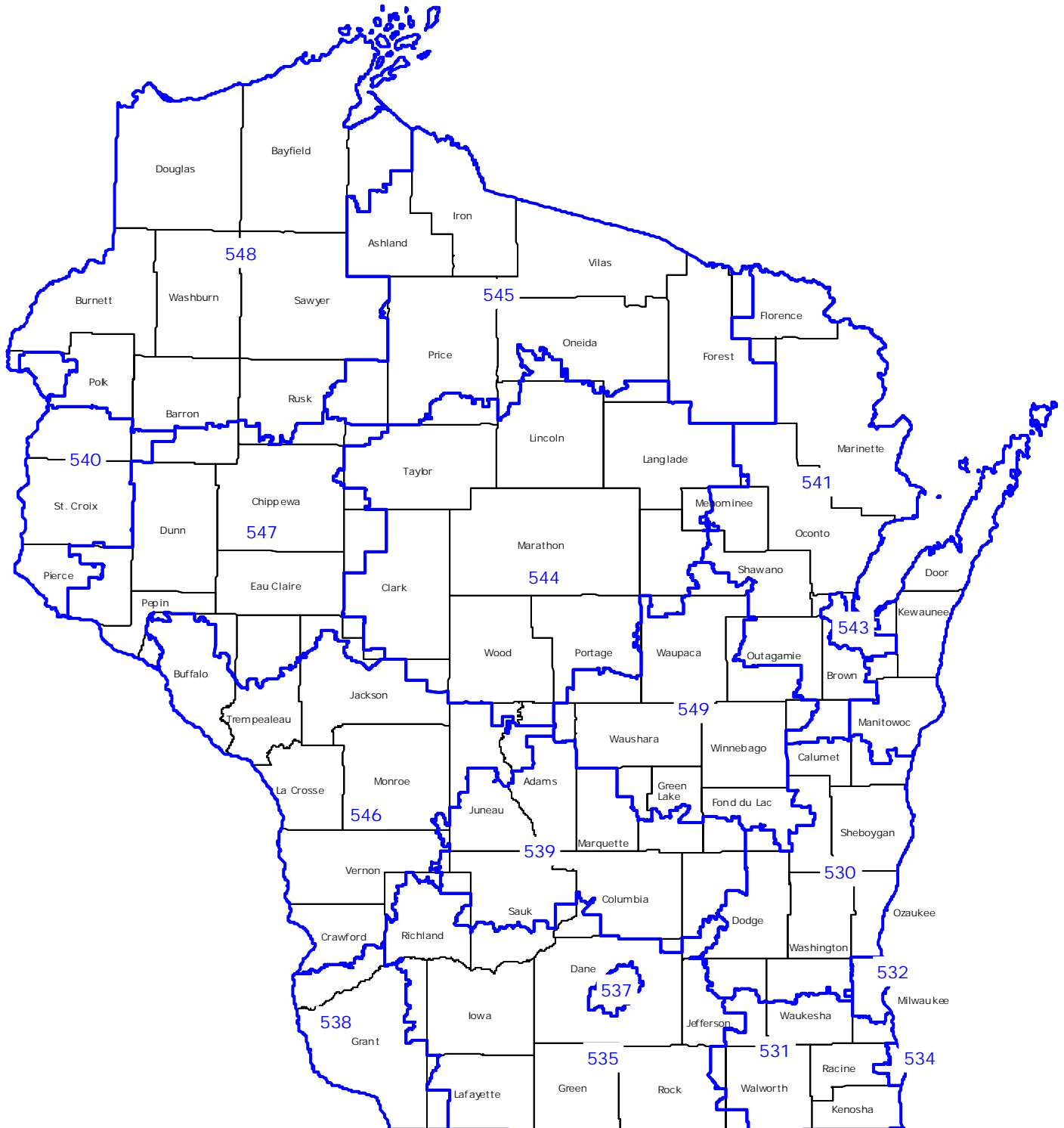
When any of these problems is encountered, the reviewer has the option to request additional information (AI request) or deny the costs. A *single isolated* problem may cause an AI request to be sent. With multiple problems or a pattern of repetitive problems, the reviewer may deny the costs and require that the problems be addressed if the denial of costs is appealed.

Remember that the AI request is but one option open to the reviewer; please respond as quickly as possible with the information requested. If costs are denied due to lack of information, related interest costs may also be denied and the claimants' out-of pocket costs are increased.

A response to an AI request is **required** within a maximum of 15 business days. The response may be required in a shorter time frame if claim payment schedules have to be met. If you cannot supply the information, or there will be a delay in obtaining it, notify the reviewer immediately. In quickly responding, you are assisting in shortening the submission-to-payment time-period and preventing the claimant from being personally liable for more costs than necessary.

PECFA Site Review Zone Coverage Map

Three-Digit Zip Code Areas in Wisconsin



PECFA Site Review Zone Contact Information

Bureau Director VACANT		Section Chief Site Review Section VACANT	
Hydrogeologist Supervisor VACANT		Program Assistant(s) Kristi Hammes (608) 267-3753 Cathy Voges (608) 261-7717 WI Dept Of Commerce FAX 608-267-1381 201 W Washington Ave PO Box 8044 Madison WI 53708-8044	
ZIP CODE STARTING WITH:		CONTACT INFO (click on project manager name to link to email address):	
530, 531, 532, 534		Lee Delcore (414) 220-5403 Stephen Mueller (414) 220-5402 Jennifer Skinner (414) 220-5373 Greg Michael (414) 220-5375 Monica Weis (414) 220-5361 Linda Michalets (414) 220-5376	WI Dept of Commerce 101 W Pleasant St Suite 100A Milwaukee WI 53212-3963 FAX 414-220-5374
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